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U.S. DISTRICT COURT  
OF OHIO

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MASTER METALS INC.,

Defendant.

CIVIL ACTION NO. C87-1471

JUDGE ALICE M. BATCHELDER

CONSENT DECREE

WHEREAS, Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency (hereinafter "U.S. EPA"), filed its Complaint in this action against Defendant, Master Metals Inc. (hereinafter "Defendant" or "Master Metals"), pursuant to the Resource Conservation and Recovery Act (hereinafter "RCRA"), 42 U.S.C. §6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), alleging that Defendant violated requirements of RCRA and regulations promulgated thereunder, at its facility in Cleveland, Ohio.

WHEREAS, Plaintiff and Defendant, having recognized that settlement of this matter is in the public interest, have agreed to the entry of this Consent Decree.

NOW THEREFORE, without adjudication of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

**I. JURISDICTION AND VENUE**

The Court has jurisdiction over the parties and the subject matter of this action under Section 3008(a) of RCRA, 42 U.S.C. §6928(a), and 28 U.S.C. §§1331, 1345, and 1355. The Complaint states a claim upon which the Court can grant relief against Defendant, pursuant to Section 3008(a) of RCRA, 42 U.S.C. §6928(a). Venue is proper under Section 3008(a) of RCRA, 42 U.S.C. §6928(a), and 28 U.S.C. §1391(b).

**II. STIPULATIONS**

Solely for the purpose of this Consent Decree, and without any admission of liability by Defendant, the parties stipulate to the following:

A. Master Metals Inc. is a corporation organized and existing under the laws of the State of Ohio.

B. Defendant is the owner and operator of a secondary lead smelter located at 2850 West Third Street, Cleveland, Ohio (hereinafter "Master Metals facility" or "facility"). One of the principal aspects of operations at the facility involves reclamation of non-ferrous metals and alloys, principally

materials containing lead. As the owner and operator of the Master Metals facility, Defendant is required to comply with this Consent Decree, RCRA, and regulations promulgated thereunder.

C. The Master Metals facility is a facility that contains hazardous waste management units as defined at 40 CFR 260.10.

D. Pursuant to 42 U.S.C. §6925(e)(1), on November 19, 1980, Defendant obtained "interim status" to operate certain of the facility's waste piles and treatment units, and a containerized storage area, in the manner set forth in Part A of the RCRA permit application for the facility, pending the issuance of a final RCRA operating permit. On November 8, 1985, pursuant to 42 U.S.C. §6925(e)(2), the waste piles at the facility lost interim status.

E. On January 11, 1982, Defendant filed for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Ohio.

F. On June 15, 1987, the United States, on behalf of the U.S. EPA, filed its Objection to Confirmation of debtor's proposed Plan of Reorganization under Chapter 11 of the Bankruptcy Code, alleging that the Plan failed to meet the requirements of 11 U.S.C. §1129(a), insofar as it failed to properly and adequately address debtor's environmental obligations under RCRA.

G. On September 14, 1987, the United States and Master Metals entered a Stipulation which was approved by the Bankruptcy

Court. A copy of the Stipulation is attached hereto as Exhibit A.

H. On September 18, 1987, the Bankruptcy Court entered an Order Confirming Plan of Reorganization, which incorporates by reference the above-referenced Stipulation of the United States and Master Metals.

I. From July 15, 1983, until January 31, 1986, the State of Ohio had Phase I interim authorization pursuant to Section 3006 of RCRA, 42 U.S.C. §6926, to administer a hazardous waste program in lieu of the Federal program in the State of Ohio. This authorization allowed either the State or U.S. EPA to enforce Ohio hazardous waste regulations, where applicable, in lieu of Federal regulations. U.S. EPA retained authority in matters related to the issuance of final RCRA Permits during this period. On July 31, 1986, the State of Ohio's authorization to carry out its hazardous waste program in lieu of the Federal program expired. On June 30, 1989, the State of Ohio was granted Final Authorization by the Administrator of U.S. EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. §6926(b), to administer a hazardous waste program in lieu of the Federal program. See 54 Federal Register 27170 (1989). As a result, facilities in Ohio qualifying for interim status under Section 3005(e) of RCRA, 42 U.S.C. §6925(e), are now regulated under the Ohio provisions found at Ohio Administrative Code (OAC) Rule 3745-50 et seq., rather than the equivalent Federal regulations set forth at 40 CFR Part 265. The federally approved State regulations are

enforceable by the United States pursuant to Section 3008(a) of RCRA, 42 U.S.C. §6928(a). Accordingly, this Consent Decree cites to both the federal regulations which were applicable when the Complaint was filed, and to the equivalent regulations under Ohio's approved RCRA program.

### III. APPLICABILITY

This Consent Decree shall apply to and be binding upon the parties to this action, their agents, officers, directors, employees, successors, assigns, and all persons, firms, entities and corporations acting under, through, or for them, or in active concert or participation with them. The Defendant shall be responsible for the acts of any of its agents, officers, directors, employees, successors, assigns, contractors, and consultants, which violate or cause the Defendant to violate the terms hereof. In the event that Defendant proposes to sell or transfer the real property or operations subject to this Consent Decree, Defendant shall, prior to transfer of ownership or operation, notify each successor in interest of the existence and terms of this Decree, and shall notify U.S. EPA, the United States Attorney for the Northern District of Ohio, and the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, in writing, of such proposed sale or transfer, at least two weeks in advance thereof, at the addresses set forth in Section VIII.

This Section does not relieve Defendant of its

obligation to comply with the notice requirements at 40 CFR 270.72.

#### **IV. DEFINITIONS**

A. Unless otherwise stated, all terms used in this Consent Decree shall have the same meaning as used in RCRA and in the regulations promulgated thereunder, at 40 CFR Parts 260 through 271, and OAC Rules 3745-50 through 3745-69.

B. "Master Metals facility" and "facility" mean the facility, as defined at 40 CFR 260.10 and OAC Rule 3745-50-10(26), located at 2850 West Third Street, Cleveland, Ohio.

C. "Responsible agent" means a responsible corporate officer, such as a president, secretary, treasurer, or vice-president.

#### **V. COMPLIANCE REQUIREMENTS**

##### **A. Identification of Hazardous Waste Management Units Which Must Close, and of Those That May Continue to Operate**

1. Exhibit B, which is attached hereto and incorporated herein by reference, identifies all areas at the facility where hazardous waste, or material exhibiting a characteristic of hazardous waste, has been placed, generated, treated, stored, or disposed of, at any time between November 19, 1980, and the date of lodging of this Consent Decree, including: (a) the location; (b) the nature of the activity (e.g. generation, reclamation, treatment, storage, or disposal); (c) identification of waste (by RCRA characteristic and/or hazardous waste code); and (d) the manner in which waste was stored (e.g. waste pile, container).

Defendant hereby certifies that he has conducted a diligent review of all available records and other sources regarding information required in Exhibit B, and that the information in Exhibit B is complete and accurate, to the best of his information and belief. Exhibits C and D hereto (which identify those portions of the facility that must close and those that may continue to operate in accordance with the requirements of RCRA and this Consent Decree, and are described in paragraphs A.2. and A.3. below), are based in part on information in Exhibit B. Should Defendant discover additional information, or inaccuracies, regarding Exhibit B, Defendant shall promptly notify U.S. EPA. In the event that U.S. EPA or Defendant determines that the information in Exhibit B is incomplete or inaccurate, U.S. EPA may require revisions to Exhibits C and D, in which event the parties will seek modification of the Decree by the Court to conform the Decree to such revisions.

2. Exhibit C, which is attached hereto and incorporated herein by reference, identifies areas of the facility and hazardous waste management units which, due to loss of interim status or otherwise, Defendant must close in accordance with an approved closure plan (Section V.C.1.) and 40 CFR Part 265, subpart G, and OAC Rules 3745-66-10 through 3745-66-20. Areas which must close pursuant to this paragraph are hereinafter referred to as "Closing Hazardous Waste Units." Neither this paragraph nor paragraph A.3 below limits or modifies the State of

Ohio's authority relating to development, review and approval of closure plans for the facility.

3. Exhibit D, which is attached hereto and incorporated herein by reference, consists of the corrected Part A of the RCRA permit application for the facility, including a diagram.

Exhibit D identifies, inter alia: (a) the nature of hazardous waste; (b) the volume of such waste; (c) the locations at the facility; and (d) the type of operations (storage or treatment), which existed at the facility on November 19, 1980 and which Defendant may continue after the Decree's entry, subject to the requirements of RCRA and this Consent Decree (including, but not limited to, Section V.G. and Section VII. E. and F. below).

Hazardous waste storage and treatment units which, pursuant to this paragraph, Defendant may continue to operate after entry of this Consent Decree, are hereinafter referred to as "Operating Hazardous Waste Units."

**B. General Facility Requirements**

1. Within thirty (30) days after entry of this Consent Decree, Defendant shall develop and implement an inventory system that tracks all hazardous waste, and all material for reclamation other than hazardous waste, that is received, generated, or stored, at the facility, from the time of receipt or generation at the facility to the time of ultimate disposition. This inventory system shall include a container labelling and tracking system. All information required under this paragraph shall be



maintained in the facility's operating record, as required under 40 CFR 265.73 and OAC Rule 3745-65-73.

2. To the extent not provided under paragraph A.1. above, within thirty (30) days after entry of this Consent Decree, Defendant shall submit to U.S. EPA an inventory of -- (a) all hazardous waste, and (b) all material for reclamation other than hazardous waste, -- that is currently at the facility, or which Defendant has, since November 19, 1980, treated, stored, or disposed of in a Closing Hazardous Waste Unit at the facility. The inventory shall, based on best information, include the nature and volume of the waste or material, the type of activity (treatment, storage, disposal), the manner in which the waste or material is or was handled (e.g., container, waste pile), and a diagram identifying the location of the waste or material.

3. Effective immediately upon entry of this Consent Decree, Defendant shall not accept from off-site or manage any hazardous waste except as specified in Part A of the permit application for the facility, attached hereto as Exhibit D, and addressed in the facility's waste analysis plan.

4. Within thirty (30) days after entry of this Consent Decree, Defendant shall submit to the Ohio Environmental Protection Agency ("Ohio EPA") annual reports for 1986, 1987, and 1988. Thereafter, Defendant shall submit to Ohio EPA reports as required by 40 CFR 265.75 and OAC Rule 3745-65-75. Copies of the reports required under this paragraph shall be concurrently submitted to U.S. EPA.

5. Defendant shall not accept hazardous waste at the facility or ship any hazardous waste from the facility unless it is manifested in accordance with the requirements of 40 CFR Part 262 and OAC Rule 3745-52 et seq.

6. Effective immediately upon entry of this Consent Decree, Defendant shall not (i) accept at the facility from off-site any hazardous waste, or any material other than hazardous waste for reclamation or for storage prior to reclamation or treatment, or (ii) crack batteries at the facility, until Defendant has fully complied with requirements of Section V., paragraphs E.3, E.4, F.1, and F.3, and has provided written certification of compliance to U.S. EPA. In addition, within thirty (30) days after entry of this Consent Decree, Defendant shall submit to U.S. EPA, for approval, a plan which describes: (a) the proposed location and method for cracking batteries; (b) safeguards to prevent the release of acid or other hazardous constituents into the environment; and (c) the method for collection, storage, and neutralization of acid, in accordance with the requirements of RCRA. Within fifteen days after notification of any deficiency or required modification, Defendant shall submit to U.S. EPA a plan which corrects any such deficiency and makes any such modification. Upon approval by U.S. EPA, Defendant shall implement the approved plan. In addition, after July 31, 1990, Defendant shall not (i) accept at the facility from off-site any hazardous waste, or any material other than hazardous waste for reclamation or for storage prior

to reclamation or treatment, or (ii) crack batteries at the facility, unless Defendant is in compliance with Section V.E.5. below.

7. Effective immediately upon entry of this Consent Decree, as required by 40 CFR 265.31 and OAC Rule 3745-65-31, Defendant shall maintain and operate the facility to minimize the possibility of fire, explosion, or any unplanned release of hazardous waste or hazardous constituents to air, soil, or surface water, which could threaten human health or the environment.

8. Effective immediately upon entry of this Decree, Defendant shall regularly conduct inspections of the entire facility in accordance with 40 CFR 265.15(a) and OAC Rule 3745-65-15(a), to discover deterioration of containers or equipment, releases, malfunctions in monitoring, safety, or emergency equipment, and any other condition or event which may cause or lead to the release of hazardous waste or hazardous constituents into the environment or a threat to human health or the environment. Within thirty (30) days after entry of this Consent Decree, Defendant shall submit to U.S. EPA for review and approval, and implement, an inspection plan and schedule for the facility. Defendant shall modify the inspection plan in accordance with any comments received from U.S. EPA within fifteen (15) days after receipt of any such comments. Defendant shall record observations from inspections as required by

40 CFR 265.15(b) and (d) and OAC Rule 3745-65-15(b) and (d), and shall, immediately upon detection, correct any problems or potential problems, as required by 40 CFR 265.15(c) and OAC Rule 3745-65-15(c).

9. Within thirty (30) days after entry of this Consent Decree, Defendant shall submit to U.S. EPA certification that the facility contains all equipment required under 40 CFR 265.32 and OAC Rule 3745-65-32, an inventory of the equipment, and a diagram of the facility that shows the location of each piece of equipment.

10. Defendant shall, within thirty (30) days after the entry of this Consent Decree, submit to U.S. EPA for approval a written Contingency Plan which satisfies the requirements of 40 CFR 265.50 through 265.56 and OAC Rules 3745-65-50 through 3745-65-56. At the time of submittal to U.S. EPA, Defendant shall submit copies of the contingency plan to local emergency authorities, as required by 40 CFR 265.53 and OAC Rule 3745-65-53. Thereafter, Defendant shall modify the plan in accordance with 40 CFR 265.54 and OAC Rule 3745-65-54 and any comments from U.S. EPA, within fifteen (15) days after receipt of any such comments, and provide copies of any modifications to the plan to local emergency authorities upon any modification. Immediately upon entry of this Consent Decree (e.g. prior to approval of a contingency plan), Defendant shall comply with all contingency plan requirements.

11. Upon entry of this Consent Decree, the Defendant shall comply with training requirements at 40 CFR 265.16(a), (b), and (c), and OAC Rule 3745-65-16(a), (b) and (c), and maintain at the facility a written description of personnel training records and documents, as required by 40 CFR 265.16(d) and (e), and OAC Rule 3745-65-16(d) and (e).

12. Within thirty (30) days after entry of this Consent Decree, Defendant shall provide for facility security, in accordance with the requirements of 40 CFR 265.14 and OAC Rule 3745-65-14, including the requirement to maintain a fence in good repair.

13. Within sixty (60) days after the entry of this Consent Decree, Defendant shall maintain at the facility, and make available to U.S. EPA upon request, a written operating record which contains the information required under 40 CFR 265.73 and OAC Rule 3745-65-73, and the information required to be included pursuant to this Consent Decree.

14. Defendant shall retain a consultant or employee qualified to oversee the implementation of the requirements of this Consent Decree.

15. Prior to placing any hazardous battery casings or other hazardous waste in the rotary kilns, Defendant shall submit to U.S. EPA certification and documentation that this practice does not violate any permit requirement for the facility under the Clean Air Act, 42 U.S.C. §7401 et seq., and regulations promulgated thereunder, equivalent state law requirements, 40 CFR

Part 266, Subpart D, or OAC Rules 3745-58-40 through 3745-58-46, or any other Federal or State law, regulation, or permit.

Compliance with this paragraph does not relieve Defendant from complying with the requirements for notice under any Federal or State law. Nothing in this paragraph shall constitute approval by U.S. EPA for such disposal or treatment activity.

**C. Closure**

1. Within sixty (60) days after entry of this Consent Decree, Defendant shall submit to Ohio EPA for approval a closure plan which meets the requirements of 40 CFR Part 265, Subpart G, and OAC Rules 3745-66-10 through 3745-66-20, for Closing Hazardous Waste Units (identified in paragraph A.2 above and Exhibit C hereto), and shall concurrently submit a copy thereof to U.S. EPA. Ohio EPA shall approve, disapprove, or modify the closure plan. Within thirty (30) days after any notification of disapproval, Defendant shall submit to Ohio EPA and U.S. EPA a revised closure plan which corrects any deficiencies identified by Ohio EPA. Upon receipt of Ohio EPA approval or modification of the closure plan, Defendant shall implement the closure plan in accordance with the schedule contained therein.

2. Within one-hundred and twenty (120) days after entry of this Consent Decree, as required by 40 CFR 265.112 and OAC Rule 3745-66-12, Defendant shall maintain at the facility a full facility closure plan, and, if necessary, post-closure plan, which provides for closure of all hazardous waste management units not included in the closure plan under Section V.C.1. above

(e.g. for all Operating Hazardous Waste Units, as defined in paragraph A.3. above and identified in Exhibit D thereto).

3. Within sixty (60) days after completion of closure of any hazardous waste management unit at the facility, Defendant shall submit to U.S. EPA and Ohio EPA certifications of closure for such waste pile or other hazardous waste unit, from the facility owner or operator and an independent engineer, in accordance with 40 CFR 265.115 and OAC Rule 3745-66-15.

**D. Waste Characterization**

1. Defendant shall complete waste determinations as required by 40 CFR 262.11 and OAC Rule 3745-52-11 for all solid waste generated at the facility (other than waste analyzed under paragraphs 4 - 6 below), including, but not limited to, sludge from drains, piping, catch basins, and sumps. Defendant shall maintain the results of these analyses in the facility's operating record, and shall submit the results to U.S. EPA within thirty (30) days after conducting the waste determinations.

2. Within sixty (60) days after the entry of this Consent Decree, Defendant shall, in accordance with 40 CFR 265.13(a) and (b), and OAC Rule 3745-65-13(a) and (b), develop and submit to U.S. EPA for approval a plan for the analysis of all hazardous waste except lead acid batteries as provided at 40 CFR 266.80, that is generated, received, or stored at the facility, and shall implement the plan as to all such waste generated or received from off-site after entry of this Consent Decree, or currently at the facility. Defendant shall modify the waste analysis plan in

accordance with any comments from U.S. EPA, within fifteen (15) days after receipt of such comments. Within sixty (60) days after U.S. EPA's approval or modification of the waste analysis plan, Defendant shall submit to U.S. EPA all information developed under the waste analysis plan as to waste currently at the facility. All information required by this paragraph shall be maintained in the facility's operating record.

3. Immediately upon entry of this Consent Decree, Defendant must store all slag generated at the facility, and all refractory brick removed from the furnaces, in containers, as defined at 40 CFR 260.10 and OAC Rule 3745-50-10 and managed in accordance with 40 CFR Part 265 subpart I, and OAC Rules 3745-66-70 through 3745-66-77, and manage such slag and brick as hazardous waste, unless and until analyses conducted in accordance with paragraphs D.4. and D.5. below establish that they do not exhibit the characteristic of EP toxicity for metals.

4. Each time Defendant removes refractory brick from furnaces at the facility, prior to disposal, Defendant shall test it to determine if it exhibits a characteristic for EP-toxicity for metals, and shall submit to U.S. EPA the results of these analyses within twenty (20) days after receipt of test results. Provided, however, Defendant shall submit test results to U.S. EPA within seventy-five (75) days after sampling. Defendant shall maintain the results of these analyses in the facility's operating record.



5. Defendant shall test slag generated at the facility to determine if it exhibits a characteristic for EP-toxicity for metals, a minimum of once per month, or every time a different waste stream is used in the rotary kiln, whichever is more frequent, and shall submit to U.S. EPA the results of these analyses within twenty (20) days after receipt of test results. Provided, however, Defendant shall submit results to U.S. EPA no later than seventy-five (75) days after sampling. Defendant shall maintain the results of these analyses in the facility's operating record.

6. Within forty-five (45) days after entry of this Consent Decree, Defendant shall test a representative sample of each type of battery casing at the facility to determine if they exhibit a characteristic for EP-toxicity for metals and corrosivity and shall submit to U.S. EPA the results of these analyses. Defendant shall maintain the results of these analyses in the facility's operating record.

**E. Waste Piles**

1. Effective immediately upon the entry of this Consent Decree, Defendant shall not add, place, treat, store, or dispose of, in a waste pile, any hazardous waste or any solid waste or other material, except for storage as provided below of waste that is in waste piles at the facility on the date of lodging of this Decree.

2. Immediately upon entry of this Consent Decree, Defendant shall manage the waste piles at the facility to prevent

and control wind dispersal, leachate creation, and run-on or run-off of leachate, as required by 40 CFR 265.251 and 265.253, and OAC Rules 3745-67-51 and 3745-67-53.

3. Within thirty (30) days after entry of this Consent Decree, Defendant shall remove from waste piles at the facility all solid waste, material, and hazardous waste other than china clay waste provided for in Section V.E.4. and V.E.5. below (designated in Exhibit C hereto). Defendant shall either: (a) transfer them from the waste piles into containers as defined at 40 CFR 260.10 and OAC Rule 3745-50-10, and managed in accordance with 40 CFR Part 265, subpart I, consistent with Part A of the RCRA permit application for the facility (Exhibit D hereto); (b) use them in the reclamation process at the facility; or (c) remove them from the facility and manage them in accordance with the requirements of RCRA and this Consent Decree. Thereafter, except as provided in paragraphs E.4. and E.5. below, Defendant shall not store waste in any waste pile or in any other land disposal unit at the facility.

4. Effective immediately upon entry of this Consent Decree, Defendant shall not add, place, accept, or dispose of any china clay waste at the facility, and shall not treat or store any china clay waste not present at the facility on the date of entry of this Consent Decree. Effective immediately upon entry of this Consent Decree, Defendant shall reclaim china clay waste on its facility at the optimum rate, as defined in the report by Hazen

Research, dated November 28, 1988, in its kilns, in compliance with all Federal, State, and local laws and regulations.

5. No later than July 31, 1990, Defendant shall remove all china clay waste piles from the facility. Prior to July 31, 1990, Defendant shall either: (a) transfer all china clay waste from the waste piles into containers as defined at 40 CFR 260.10 and OAC Rule 3745-50-10, and managed in accordance with 40 CFR Part 265, subpart I, consistent with Part A of the RCRA permit application for the facility (Exhibit D hereto); (b) use the china clay waste in the reclamation process at the facility; or (c) remove the china clay waste from the facility and manage it in accordance with the requirements of RCRA and this Consent Decree.

**F. Containers**

1. Within thirty (30) days after entry of this Consent Decree all hazardous waste except for the china clay waste, and all material for reclamation that exhibits a characteristic of hazardous waste, that is stored at the facility, shall be stored in containers, and staged, as provided in this paragraph. No later than July 31, 1990, all china clay waste stored at the facility shall be stored in containers, and staged, as provided in this paragraph. All containers shall be operated in accordance with the requirements of 40 CFR Part 265, subpart I, and OAC Rules 3745-66-70 through 3745-66-77. The container depicted in Exhibit E hereto is a container within the meaning of 40 CFR 260.10 and OAC Rule 3745-50-10 and, if operated in

compliance with the requirements of RCRA, including 40 CFR Part 265, subpart I, and OAC Rules 3745-66-70 through 3745-66-77, will satisfy the requirements of RCRA. Hazardous waste, and material for reclamation that exhibits a characteristic of hazardous waste, that is in containers which are not in good condition shall be transferred into containers in good condition, or overpacked. A container is not in good condition if it contains any leaks, holes, or bulges, is deteriorating, or otherwise appears structurally unsound. Containers which contain free liquids as defined by the Paint Filter Liquids Test (Test Methods for Evaluation of Solid Waste, U.S. EPA Publication SW - 846, test method no. 9095), shall be stored on pallets. As required by 40 CFR 265.173 and OAC Rule 3745-66-73, all containers shall be stored closed and secured, except when waste is being removed from or placed into containers. All containers shall be properly labelled.

2. Defendant shall not accept any hazardous waste, or material for reclamation that exhibits a characteristic of hazardous waste, at the facility from off-site unless it arrives in containers which are in good condition, or is placed into containers which are in good condition immediately upon arrival at the facility.

3. Within fifteen (15) days after entry of this Consent Decree, Defendant shall have all containers of ignitable and corrosive hazardous waste (hazardous waste codes D001 and D002) removed from the facility in accordance with all applicable

requirements, and shall submit to U.S. EPA copies of manifests for off-site transport of these hazardous wastes.

G. Financial Assurance and Insurance

1. Within sixty (60) days after the entry of this Consent Decree, Defendant shall submit to U.S. EPA written certification of compliance with liability coverage requirements of 40 CFR 265.147 and OAC Rule 3745-66-47 for the facility. Defendant shall maintain such liability coverage for as long as required under 40 CFR Part 265, subpart H, and OAC Rules 3745-66-40 through 3745-66-48.

2. If Defendant fails to obtain liability coverage satisfying the requirements of 40 CFR 265.147(a) and OAC Rule 3745-66-47(a) for all Operating Hazardous Waste Units within 180 days after entry of this Consent Decree, Defendant shall: (a) immediately cease operating, including adding waste to, all Operating Hazardous Waste Units (as defined in paragraph A.3); (b) remove all hazardous waste from such units within sixty (60) days (e.g. within 240 days after entry of this Decree), in accordance with the requirements of RCRA; and (c) commence closure of these units, in accordance with a closure plan approved under paragraph C.2. above, unless, within 180 days after entry of this Consent Decree, Defendant petitions the Court for a determination that relief other than that specified above would be the appropriate relief to be granted to Plaintiff for Defendant's failure to obtain liability coverage required by RCRA, 40 CFR 265.147 and OAC Rule 3745-66-47, and this

subparagraph, for its storage and treatment units; provided however, that the parties stipulate to the following:

(i) Defendant is required to obtain liability coverage pursuant to RCRA and 40 CFR 265.147 and OAC Rule 3745-66-47; and

(ii) Defendant has failed to obtain liability coverage required by 40 CFR 265.147 and OAC Rule 3745-66-47.

The procedures in this paragraph shall not prevent Plaintiff from pursuing, and Plaintiff hereby reserves the right to pursue, any relief that may be available for violations occurring after the date of entry of this Consent Decree.

3. Simultaneous with the submittal of any closure or post-closure plan pursuant to Section V.C.1, within one-hundred and twenty days after entry of this Consent Decree for a closure plan under Section V.C.2 above, and as required by 40 CFR 265.142(b) and OAC 3745-66-42(b), Defendant shall implement and shall submit to U.S. EPA and Ohio EPA certification that it has established financial assurance mechanisms for closure and post-closure care of the facility, respectively. Separate financial assurance mechanisms may be established for Closing Hazardous Waste Units (Section V.A.2.) and Operating Hazardous Waste Units (Section V.A.3.). The financial assurance mechanisms shall be established pursuant to the requirements of 40 CFR 265.142 through 265.146, and OAC Rules 3745-66-42 through 3745-66-46, provided however that the financial assurance mechanism for Closing Hazardous Waste Units may consist of an escrow account. Each certification shall include a detailed description of the proposed financial

assurance mechanism. Defendant shall make best efforts to fully fund the financial assurance mechanism(s) as expeditiously as practicable.

U.S. EPA shall approve or disapprove the proposed financial assurance mechanisms. Within fifteen (15) days after any notification of disapproval, Defendant shall submit to U.S. EPA a description of a financial assurance mechanism which corrects any deficiencies identified by U.S. EPA. Approval by U.S. EPA of any financial assurance mechanism under this paragraph shall not excuse any failure by the Defendants to satisfy closure and post-closure requirements under Section V.C.

#### VI. CIVIL PENALTY

Defendant shall pay a civil penalty of \$20,000 to the United States of America. The payment, including interest on the second and third installments at the rate established under 31 U.S.C. §3717, shall be made in the form of three cashier's or certified checks each in the amount of \$6900, payable to the "Treasurer of the United States of America" within one month, seven months, and thirteen months after entry of this Consent Decree, respectively, and shall be tendered to the United States Attorney for the Northern District of Ohio, at the address set forth in Section XIII. At the time of payment, a copy of such check shall be sent to U.S. EPA, at the address set forth in Section XIII.

**VII. STIPULATED PENALTIES**

A. The Defendant shall pay the following stipulated penalties:

1. For each day of failure to comply with any deadline for submitting plans, revised plans, certifications, or reports set forth in this Consent Decree:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day of Noncompliance</u>
1st through 30th day	\$ 100 per day
31st through 60th day	\$ 500 per day
61st day and each day thereafter	\$ 1,000 per day

2. For each failure to comply with any requirement set forth in this Consent Decree not addressed in Section VII.A.1. above, including any deadline in any plan required to be implemented pursuant to Section V of this Consent Decree:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day of Noncompliance</u>
1st through 30th day	\$ 1,000 per day
31st through 60th day	\$ 1,500 per day
61st day and each day thereafter	\$ 2,000 per day

B. If any plan or report required to be submitted to U.S. EPA under Sections V.B.6., V.B.8., V.B.10., V.D.2., and V.G.3. herein for approval pursuant to this Consent Decree is not approved by U.S. EPA upon its second submission after the entry of this Consent Decree (i.e., after U.S. EPA has made its second set of written comments after entry), then the submission shall be deemed inadequate and a violation of this Consent Decree, and shall be subject to stipulated penalties beginning thirty days



after Defendant receives notification from U.S. EPA that the second plan is inadequate.

C. All penalties begin to accrue on the day that performance is due or a violation occurs, and continue to accrue through the final day of correction of the violation.

D. Stipulated penalties shall accrue during any dispute resolution proceeding after Defendant has filed a petition with the Court pursuant to Section XV.C. If Defendant does not prevail, Defendant shall pay all accrued sums, with interest at the rate set forth at 31 U.S.C. §3717.

E. Defendant shall exercise best efforts to obtain and maintain liability coverage required by 40 CFR 265.147 and OAC Rule 3745-66-47. If after exercise of best efforts, Defendant is not offered liability coverage which satisfies the requirements of Section V.G.1. (liability coverage for sudden and nonsudden accidental occurrences), then, subject to the requirements of this paragraph, and except as provided in paragraph F below, no stipulated penalty shall be payable for noncompliance with any requirements of Section V.G.1. for Operating Hazardous Waste Units or Closing Hazardous Waste Units for which liability coverage was not offered.

Within sixty (60) days after entry of this Consent Decree, one-hundred and twenty (120) days thereafter, and every one-hundred and eighty (180) days subsequent (until Defendant obtains the required liability coverage or certifies compliance with closure and post-closure responsibilities, whichever occurs

first), Defendant shall provide to U.S. EPA written certification of its good faith and best efforts to satisfy the 40 CFR 265.147 and OAC Rule 3745-66-47 requirements for liability coverage for sudden and non-sudden accidental occurrences. The certifications shall, at a minimum, include the following:

1. copies of each request or application for liability coverage under RCRA, by or on behalf of the Defendant to a company, agent, or consultant;
2. copies of all responses from Defendant's consultants, and from companies and agents, to the requests referred to in paragraph 1 above, including price quotations and any explanations of why Defendant's requests or applications are not granted;
3. identification of the reasons given for a company denying liability coverage, and any preconditions to obtaining coverage;
4. a detailed description of measures taken and to be taken by Defendant to meet any preconditions to eligibility for liability coverage; and
5. a statement by an authorized official that Defendant exercised best efforts to obtain liability coverage which satisfies all requirements of 40 CFR 265.147 and OAC Rule 3745-66-47.

The first certification submitted under this paragraph shall cover the period from the date the Complaint was filed, to the date of certification. The second certification shall cover

the previous four months. All subsequent certifications shall cover the previous six months.

Defendant shall continue to make best efforts to satisfy liability coverage requirements and shall continue to submit certifications, under the terms set forth above, until the facility obtains the required insurance, or, until the Regional Administrator notifies Defendant pursuant to 40 CFR 265.147(e), within sixty (60) days of Defendant's certification that facility closure and, if necessary, post-closure responsibilities, are fulfilled, and that liability coverage is no longer needed.

F. Notwithstanding the provisions of paragraph E above, stipulated penalties shall accrue for operation of any Operating Hazardous Waste Unit at the facility which does not satisfy the liability coverage requirements of Section V.G.1. and which fails to comply with the requirements of Section V.G.2.(a) - (c) above, 180 days following entry of this Consent Decree, unless the Court has granted relief pursuant to Section V.G.2., above.

G. Stipulated penalties under this Section shall be paid by certified check payable to the "Treasurer of the United States of America". Payment shall be tendered to the United States Attorney, Northern District of Ohio, at the address set forth in Section VIII, within fifteen (15) days after the noncompliance period, or, if applicable, after resolution by the Court in accordance with Section VII.D. above, and Section XV. A copy of the transmittal document and check shall be mailed to U.S. EPA, Region V, at the address set forth in Section VIII. The

transmittal document shall identify this action, the requirement of this Consent Decree which was not complied with, the date(s) of non-compliance, and the amount of payment.

H. The stipulated penalties set forth above shall not preclude U.S. EPA from pursuing any other remedies or sanctions, including contempt proceedings, which may be available to the Plaintiff by reason of the Defendant's failure to comply with the requirements of this Consent Decree or RCRA.

#### VIII. SUBMITTALS

Any document or other item required by this Consent Decree to be submitted to U.S. EPA, Ohio Environmental Protection Agency ("Ohio EPA"), the United States Attorney for the Northern District of Ohio, or the United States Department of Justice, shall be mailed or otherwise delivered to the following persons at the addresses set forth below:

Branch Chief  
U.S. EPA, Region V  
RCRA Enforcement Branch, 5HR-12  
230 South Dearborn Street  
Chicago, Illinois 60604

Section Chief  
Ohio Environmental Protection Agency  
Division of Solid and Hazardous  
Waste Management  
1800 WaterMark Drive  
P.O. Box 1049  
Columbus, Ohio 43265-1049

Ohio Environmental Protection Agency  
Northeast District Office  
Division of Solid and Hazardous Waste  
2110 East Aurora Road  
Twinsburg, Ohio 44087-1969

United States Attorney  
for the Northern District of Ohio  
1404 East Ninth Street  
Cleveland, Ohio 44114

*enclosed 69000 check*

United States Department of Justice  
Environmental Enforcement Section  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044

Delivery shall be considered complete upon deposit of the material at issue in the U.S. Mail, certified mail, or with a reputable delivery service.

All plans required by this Consent Decree shall become enforceable requirements of this Consent Decree upon U.S. EPA approval and written notification of approval to the Defendant.

Any correspondence that is to be directed to the Defendant shall be sent to the following:

Douglas Mickey, President  
Master Metals, Inc  
2850 W. Third Street  
Cleveland, Ohio 44113

Michael A. Cyphert, Esq.  
Thompson, Hine and Flory  
1100 National City Bank Building  
Cleveland, Ohio 44114

#### **IX. ACCESS TO THE FACILITY AND SAMPLES**

A. U.S. EPA, Ohio EPA, and their respective employees, contractors, and authorized representatives shall have access to the facility at all reasonable times for the purposes of inspecting, sampling, and evaluating compliance with the provisions of this Consent Decree, including the right to

photograph and review and copy sampling data and other records. In addition, Defendant shall insure that such persons have the authority to inspect at all reasonable times laboratories used by Defendant or its contractors for analyses. U.S. EPA and Ohio EPA employees, contractors, and other authorized representatives, shall have the right to take splits of any samples taken by the Defendant or its contractors in the course of performing work required by this Consent Decree. U.S. EPA shall be given at least ten (10) days notice prior to any sampling relating to closure required under this Consent Decree. Except as provided otherwise herein, Defendant shall provide U.S. EPA results of all analyses within fifteen (15) days after receiving the results from the laboratory.

B. This Section in no way limits any right of entry available to U.S. EPA or Ohio EPA pursuant to applicable Federal or State laws, regulations, or permits, including, but not limited to, Section 3007 of RCRA, 42 U.S.C. §6927.

#### X. REPORTING

A. Beginning the fifteenth day of the month following entry of this Consent Decree, and every thirty (30) days thereafter until termination of this Consent Decree, Defendant shall submit to U.S. EPA a description of the measures Defendant has taken in accordance with this Consent Decree during the previous thirty (30) days and a status report for compliance with the requirements of the Consent Decree.

B. Within thirty (30) days after the date for completion of any requirement contained in this Consent Decree, including any requirement in a plan developed hereunder (other than a requirement to submit a document to U.S. EPA), Defendant shall notify U.S. EPA in writing of compliance or noncompliance with said requirement. If any required action has not been taken or completed in accordance with any schedule, Defendant shall notify U.S. EPA of the reasons for any failure to complete such activity, the measures Defendant has taken toward meeting the requirement, the projected date for completion, and the probability of meeting the next requirement in the schedule. The notification does not excuse any noncompliance. If the compliance status changes with respect to any requirements of the Consent Decree, Defendant shall also notify U.S. EPA in writing of the change in compliance status.

C. All submittals made under Section X shall be signed by a responsible agent of the facility and shall include the following certification statement:

"I certify that the information contained in or accompanying this (submission) (document) is true, accurate, and complete."

**XI. RESERVATION OF RIGHTS AND OBLIGATION  
TO COMPLY WITH ALL LAWS**

A. Plaintiff does not waive any rights or remedies, and this Consent Decree is without prejudice to Plaintiff's rights and remedies, including, but not limited to: (1) the right to impose any permit requirements, including corrective

action requirements under Section 3004(u) and (v) of RCRA, 42 U.S.C. §6924(u) and (v); (2) the right to take any action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, Pub L. 99-499 (hereinafter "CERCLA"); (3) the right to require corrective action pursuant to Section 3008(h) of RCRA, 42 U.S.C. §6928(h); and (4) the right to pursue remedies available to the United States for any violation by Defendant of this Consent Decree, or of any Federal or State law, regulation, or permitting condition, not specifically alleged in the Complaint and resolved by this Consent Decree.

B. The execution or performance of this Consent Decree by Defendant shall not constitute an admission of any fact or legal issue, or of any liability or wrongdoing relating to the Master Metals facility. Defendant expressly reserves the right to raise all legal and equitable rights, claims and defenses which it may have under RCRA or any other legal authority in any proceeding, other than one to enforce the requirements of this Consent Decree except to the extent permitted herein, and except to the extent inconsistent with the terms of this Consent Decree.

C. This Consent Decree in no way relieves Defendant of its responsibility to comply with all applicable Federal, State and local laws, regulations, and permit conditions. This Consent Decree is neither a permit nor a modification to a permit.



**XII. PRECLUSION OF CLAIMS AGAINST THE  
HAZARDOUS SUBSTANCE RESPONSE TRUST FUND**

Defendant agrees not to make any claims pursuant to Sections 106(b), 111 or 112 of CERCLA, 42 U.S.C. §§9606(b), 9611 or 9612, or any other provision of law directly or indirectly against the Hazardous Substance Response Trust Fund established by CERCLA for costs incurred in complying with this Consent Decree. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of 40 CFR 300.25(d).

**XIII. COSTS**

Each party to this action shall bear its own costs and attorney's fees.

**XIV. MODIFICATIONS**

No requirement or provision of this Consent Decree shall be modified except upon written agreement by the parties and further order of this Court, or upon order by this Court under Section XV herein (Dispute Resolution).

**XV. DISPUTE RESOLUTION**

A. In the event that the parties cannot resolve a dispute with respect to this Consent Decree, then the interpretation advanced by the United States shall be considered binding unless Defendant invokes the dispute resolution provisions of this Section.

B. If in the opinion of any party there is a dispute with respect to this Consent Decree, that party shall send a written notice to the other party which outlines the nature of the dispute and requests informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when the notice was sent unless the parties agree otherwise.

C. If the informal negotiations are unsuccessful, Plaintiff's position shall control unless Defendant files with the court a petition which shall describe the nature of the dispute and include a proposal for its resolution. Defendant's petition must be filed no more than twenty (20) days after termination of informal negotiations. Plaintiff shall then have twenty (20) days to respond to the petition. In any such dispute, Defendant shall have the burden of proving that Plaintiff's position is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.

D. Invocation of the dispute resolution provisions of this Section shall not extend or postpone any deadlines affected by the dispute.

#### **XVI. FORCE MAJEURE**

A. A "Force Majeure" event for purposes of this Decree is defined as any event that is caused by circumstances entirely beyond the control of Defendant or any entity controlled by or under the common control of Defendant including the Defendant's consultants and contractors, and that Defendant could not have

foreseen and prevented, that delays or prevents the performance of any obligation under this Consent Decree.

B. When circumstances are occurring or have occurred that can reasonably be anticipated to cause a delay in achieving any requirement set forth in this Consent Decree, or in any plan developed hereunder within the time allowed under the Decree, whether or not due to a "Force Majeure" event, Defendant shall promptly notify U.S. EPA -- in no event later than two business days (for verbal notification) and five business days (for written notification) after Defendant obtains information indicating that a delay reasonably can be anticipated to be encountered. The required written notice shall include a detailed explanation of the precise cause(s) for and anticipated duration of any such delay; the measures taken and to be taken by Defendant to prevent or minimize the delay; the timetable for implementation of such measures; the anticipated date such requirement will be achieved; a statement as to whether Defendant is claiming a "Force Majeure"; and the bases for Defendant's claim of "Force Majeure". The Defendant shall adopt all reasonable measures to avoid or minimize any such delay. Failure to notify within the time period specified above shall constitute a waiver of any claim of "Force Majeure." Notification of any delay, in and of itself, shall not extend the time allowed for meeting any requirement or excuse the delay or payment of stipulated penalties.

C. If the United States agrees that a delay is or was attributable to a "Force Majeure" event, the parties shall, by written agreement, modify the compliance schedule to provide such additional time as may be necessary to allow the completion of the specific phase of the required activity and/or any succeeding phase of the activity affected by such delay, not to exceed the actual duration of the delay.

D. If the United States and Defendant are unable to agree as to whether the reason for the delay was a "Force Majeure" event, or on a stipulated extension of time, then the Dispute Resolution provisions of Section XV shall apply. Defendant shall have the burden of demonstrating that the event was a "Force Majeure" event, that the duration of the delay caused by such event is or was warranted under the circumstances, and that, as a result of the delay, a particular extension period is appropriate.

E. Increased costs of complying with this Consent Decree, or Defendant's financial inability to carry out the provisions of this Consent Decree, shall not be considered a "Force Majeure" event.

#### **XVII. CONTINUING JURISDICTION OF THE COURT**

The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

**XVIII. TERMINATION**

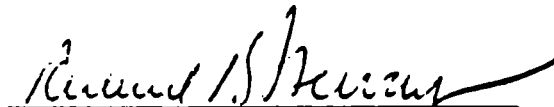
Within thirty (30) days after Defendant judges it has fully complied with all of the requirements of this Consent Decree other than reporting, and is continuing to comply with the reporting requirements of this Consent Decree, it shall submit to U.S. EPA a certification of compliance. If U.S. EPA concurs that Defendant has fully satisfied the requirements of this Consent Decree, the parties shall file a joint motion with the Court to terminate this Consent Decree.

**XIX. NOTICE REQUIREMENTS**


The parties acknowledge that final approval by the United States and the entry of this Consent Decree are subject to the Public Notice and Comment requirements of 28 CFR 50.7.

FOR THE UNITED STATES OF AMERICA


FOR DEFENDANT, MASTER METALS

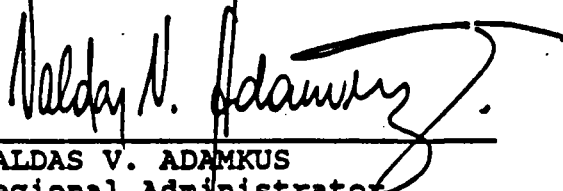



RICHARD B. STEWART  
Assistant Attorney General  
Land and Natural Resources Division  
U.S. Department of Justice

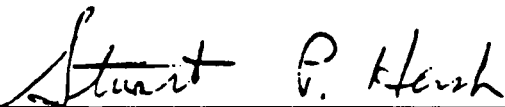
  
DOUGLAS K. MICKEY  
President, Master Metals  
8/29/89 Pres.

WILLIAM J. EDWARDS  
Acting United States Attorney  
Eastern District of Ohio

  
EDWARD E. REICH  
Acting Assistant Administrator for  
Enforcement and Compliance Monitoring  
United States Environmental Protection  
Agency

  
VALDAS V. ADAMKUS  
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230 South Dearborn Street  
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BARBARA A. ROGERS  
Environmental Enforcement Section  
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Washington, D.C. 20044

  
STUART HERSH  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency, Region V  
230 South Dearborn Street  
Chicago, Illinois 60604

ENTERED, this 15<sup>th</sup> day of January, 1990

  
JUDGE ALICE M. BATCHELDER  
United States District Court Judge